

The Administrative Law Judge awarded claimant permanent partial disability compensation based upon a work disability. Respondent disputes that finding and contends the claimant has no permanent impairment and no permanent disability. Respondent further disputes the award for future medical treatment and seeks clarification that the award acknowledges its overpayment of temporary total disability compensation to claimant. There is no dispute concerning claimant's entitlement to temporary total disability compensation. The overpayment was due to claimant being paid at the wrong weekly rate. Accordingly, the issues for Appeals Board review are the nature and extent

of claimant's disability, future medical benefits, and overpayment of temporary total disability compensation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire record and having considered the briefs and arguments of the parties, the Appeals Board finds that the Award entered by the Administrative Law Judge should be affirmed.

The findings of fact and conclusions of law enumerated in the Award by the Administrative Law Judge are found to be accurate and are adopted by the Appeals Board. The Appeals Board agrees with the analysis of the record by the Administrative Law Judge regarding the nature and extent of claimant's disability and, in particular, the evidence concerning the percentage of work disability.

Respondent places great significance upon claimant's failure to avail himself of the additional treatment with Dr. George Dyck recommended by Dr. Theodore A. Moeller. The record reflects, and respondent's counsel agreed, that claimant was sent to Dr. Moeller for an independent medical examination (IME). Dr. Moeller was not an authorized treating physician. Thus, he had no authority to authorize additional therapy with Dr. Dyck. Claimant testified that he contacted Dr. Dyck's office about the June 1996 appointment that Dr. Moeller had arranged for him, but that claimant was advised Dr. Dyck would not see him without authorization from the respondent's insurance carrier. There is no indication that thereafter respondent or its insurance carrier ever authorized Dr. Dyck to treat claimant. Accordingly, Dr. Moeller's conclusions that claimant was non-compliant and unmotivated based upon his failure to see Dr. Dyck are questionable. The Appeals Board agrees with the finding by the Administrative Law Judge that claimant would likely benefit from additional treatment.

The parties agree the Award provides for payment of the disability awarded "less amounts previously paid." In this way, respondent receives a credit for the overpayment of temporary total disability compensation.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Julie A. N. Sample dated December 23, 1997, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of July 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Paul D. Leader, Wichita, KS
Kurt W. Ratzlaff, Wichita, KS
Julie A. N. Sample, Administrative Law Judge
Philip S. Harness, Director